

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ERIK GARCIA

Plaintiff,

v.

LE TTVM, LLC,

Defendant.

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CIVIL ACTION NO. 4:20-cv-02615

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant, LE TTVM, LLC, by and through the undersigned counsel, and files this its Original Answer to the Plaintiff's Complaint. For the introductory, unnumbered paragraph of the Complaint, Defendant admits Plaintiff has filed a Complaint against Defendant, seeking declaratory and injunctive relief, along with attorney's fees and costs pursuant to the American Disabilities Act 42 U.S.C. § 12181 et seq. ("ADA") and the ADA's Accessibility Guidelines, 28 C.F.R. Part 36 ("ADAAG").

1. Defendant admits that this Court has original jurisdiction over this matter, but denies any violation of the ADA or ADAAG, and Defendant denies all remaining allegations in Paragraph 1.
2. Defendant admits that venue is proper in the Southern District of Texas. Except as expressly admitted, Defendant denies all remaining allegations in Paragraph 2 about acts amounting to improper action occurring.

3. Defendant is without sufficient information or belief to admit or deny the allegations contained within Paragraph 3 and therefore denies the allegations included within the paragraph.
4. Defendant is without sufficient information or belief to admit or deny the allegations contained within Paragraph 4 and therefore denies the allegations included within the paragraph.
5. Defendant is without sufficient information or belief to admit or deny the allegations contained within Paragraph 5 and therefore denies the allegations included within the paragraph.
6. Defendant is without sufficient information or belief to admit or deny the allegations contained within Paragraph 6 and therefore denies the allegations included within the paragraph.
7. Defendant admits that it is a domestic limited liability company formed in Texas doing business in Harris County.
8. Defendant admits the statement made in Paragraph No. 8 of the Complaint.
9. Defendant is without sufficient information or belief to admit or deny the allegations contained in Paragraph No. 9 of the Complaint and therefore, denies.
10. Defendant admits that it is the owner or co-owner of the rental property in the allegations in Paragraph No. 10 of the Complaint.
11. Defendant is without sufficient information or belief to admit or deny the allegations contained in Paragraph No. 11 of the Complaint and therefore, denies.

12. Defendant denies that Plaintiff ‘s “access to the business(es) located at 6071 Broadway Street, Pearland, TX 77581”, and/or “enjoyment of the goods, services, foods, drinks, facilities, privileges, advantages and/or accommodations offered therein” have been or will be denied or limited as alleged in Paragraph No. 12.
13. Paragraph No. 13 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required. With respect to those portions of this paragraph to which a response is necessary, Defendant denies the allegations contained therein. Specifically, Defendant denies that it exercised control and dominion over the conditions and denies that it had the means and ability to make the change.
14. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 14.
15. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 15.
16. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 16.

COUNT I.

VIOLATIONS OF THE ADA AND ADAAG

Defendant restates and incorporates by reference the responses contained in all preceding paragraphs.

17. Paragraph No. 17 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
18. Paragraph No. 18 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.

19. Paragraph No. 19 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
20. Paragraph No. 20 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
21. Paragraph No. 21 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
22. Paragraph No. 22 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
23. Paragraph No. 23 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
24. Paragraph No. 24 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
25. Paragraph No. 25 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
26. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 26.
27. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph No. 27.
28. Defendant denies the allegations set forth in Paragraph No. 28 of the Complaint.
29. Defendant denies the allegations set forth in Paragraph No. 29 of the Complaint.
30. Defendant denies the allegations set forth in Paragraph No. 30 of the Complaint.
31. Defendant Defendant neither admits nor denies the statements made in Paragraph No. 31 of the Complaint.

32. Paragraph No. 32 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
33. Paragraph No. 33 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
34. Paragraph No. 34 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
35. Paragraph No. 35 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
36. Paragraph No. 36 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required. To the extent that a response is necessary, Defendant denies that Defendant “has the financial resources to make the necessary modifications” as Plaintiff alleged.
37. Paragraph No. 37 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
38. Defendant Defendant neither admits nor denies the statements made in Paragraph No. 31 of the Complaint.
39. Paragraph No. 39 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.
40. Paragraph No. 40 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required. To the extent that a response is necessary, Defendant denies all allegations made in this paragraph.

41. Paragraph No. 41 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required. To the extent that a response is necessary, Defendant denies the allegation that Plaintiff's requested relief serves the public interest.

42. Paragraph No. 42 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required. To the extent that a response is necessary, Defendant denies allegations made in Paragraph No. 42.

43. Paragraph No. 43 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required. To the extent that a response is necessary, Defendant denies allegations made in Paragraph No. 43.

44. Paragraph No. 44 of the Complaint contains characterization of this lawsuit and conclusions of law, not allegation of facts, and thus no response is required.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses to the Complaint but assumes the burden of proof on any such defenses only if required by applicable law with respect to the particular defense asserted. Defendant further reserves the right to assert additional defenses, to amend, and/or otherwise to supplement.

FIRST DEFENSE

Plaintiff failed to provide pre-suit notice of any alleged violations of the ADA or the alleged need for modifications or barrier removal.

SECOND DEFENSE

Plaintiff's lawsuit is moot or will be moot.

THIRD DEFENSE

There is no case or controversy as to many of Plaintiff's claims and thus this Court does not have jurisdiction over such claims.

FOURTH DEFENSE

Even if the Court were to find that Defendant is not fully in compliance with the ADA, the changes which Plaintiff demands are not necessary to make the facilities readily accessible and are not reasonable modifications or accommodations because they are not readily achievable or easily accomplished, and/or would be unduly burdensome.

FIFTH DEFENSE

Defendant asserts that it is not subject to the regulations or standards which relate only to facilities constructed after the facilities were completed.

SIXTH DEFENSE

Plaintiff has not established that he has a disability covered by Title III of the ADA that entitles him to the relief requested. Furthermore, Defendant did not exclude, deny, or limit service to, segregate or otherwise treat Plaintiff differently from other individuals on account of an alleged disability.

SEVENTH DEFENSE

Plaintiff did not and cannot establish an injury in fact or future injury based on the allegations in the Complaint.

EIGHTH DEFENSE

Plaintiff failed to establish that he reasonably desired access to the facilities or services provided by Defendant, nor can he establish that he was denied access to Defendant's property, or that he desires access to, or will be denied access to Defendant's property or services in the future.

NINTH DEFENSE

Without acknowledging any requirement to do so, if applicable, Defendant has made or will make reasonable modifications in policies, practices or procedures when such modifications are necessary to afford goods, services, facilities, privileges, advantages or accommodations to disabled individuals.

TENTH DEFENSE

Defendant asserts the defense of good faith.

ELEVENTH DEFENSE

Plaintiff has unclean hands.

TWELFTH DEFENSE

Where available, Defendant has provided and will provide equivalent facilitation for its goods and services.

THIRTEENTH DEFENSE

The prerequisites for injunctive relief are not present.

FOURTEENTH DEFENSE

Plaintiff is not entitled to any attorney's fees or costs for his allegations in this case.

FIFTEENTH DEFENSE

Plaintiff pleads all applicable defenses and exceptions available under the ADA.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that this Honorable Court enter judgment that Plaintiff takes nothing by this suit, dismissing Plaintiff's suit with prejudice, assessing attorney's fees and costs against Plaintiff, and awarding Defendant all other relief, at law and in equity, general or special, to which this Defendant might show itself to be justly entitled to receive.

Respectfully submitted,

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BY: /s/ Shandon Phan
Shandon Phan
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ATTORNEY FOR DEFENDANT,
LE TTVM, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2020 a true and correct copy of the above and foregoing document has been served via electronic or regular mail, postage prepaid, on the following parties:

Douglas S. Schapiro
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/s/ Shandon Phan
Shandon Phan